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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

FEDERAL ENERGY REGULATORY COMMISSION

and

JAMES B. EDWARDS, Secretary of Energy,

Appellants,

v.

THE STATE OF MISSISSIPPI, ET AL.,

Appellees.

On Appeal From The United States District Court For The Southern District Of Mississippi

BRIEF OF AMICI CURIAE NATIONAL ALLIANCE FOR HYDROELECTRIC ENERGY, UNITED STATES CONFERENCE OF MAYORS, NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, REPUBLIC GEOTHERMAL, INC., U.S. WINDPOWER, INC. IN SUPPORT OF APPELLANTS

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ASSOCIATION, REPUBLIC GEOTHERMAL, INC.,
U.S. WINDPOWER, INC.**

IN SUPPORT OF APPELLANTS

THE INTERESTS OF THE AMICI CURIAE

The Court must decide in this case whether the lower court erred in holding that Titles I and III and Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA)[1] are unconstitutional. The *amici curiae* joining together in this brief represent nearly all of the broad spectrum of cogeneration and small power production facilities Section 210 was designed to encourage. While these *amici* note the importance of upholding the constitutionality of Titles I and III, this brief will address only Section 210.[2]

The National Alliance for Hydroelectric Energy (NAHE) is an alliance of persons and businesses directly involved in constructing, financing, and operating hydropower facilities in the United States. NAHE was founded to assist in eliminating the institutional barriers to this development. This effort is tightly bound to the continued vitality of Section 210.

The U.S. Conference of Mayors (Mayors) is composed of over 800 Mayors of cities with populations of 30,000 or more. In addition to the interest that the Mayors have in the conversion of solid waste to energy, many of the represented municipalities also operate or plan to operate central steam heating plants. Surplus heat from these plants can and should be used to generate electricity, and the incentives of Section 210 encourage that productive use.

The National Solid Waste Management Association (NSWMA) is the trade association for the private sector of the wastes industry. NSWMA members, approximately

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[1] Pub. L. No. 95-617, 92 Stat. 3117 (1978).

[2] Section 210 is codified at 16 U.S.C. § 824a-3.

2,000 in number, are primarily engaged in solid, chemical and hazardous waste disposal. Any productive use that can be made of these wastes, especially solid waste, has a great potential impact on NSWMA's members, who believe that Section 210 is providing and will continue to provide critical incentives for the conversion of solid waste into energy.

Republic Geothermal, Inc. (RGI) is one of the largest developers engaged in the exploration for, and development, production and sale of geothermal resources. RGI holds interests in seven sites on which exploratory and/or development wells have been drilled and in numerous other sites where drilling has yet to occur. Such geothermal wells are being and will be used to generate electricity. Without the incentives provided by Section 210, however, very little if any of this activity would be taking place.

U.S. Windpower, Inc. (USW) is a manufacturer of intermediate size windmills and a "wind farm" developer. A wind farm is an electric generating facility composed of a number of windmills operated as a single unit. Purchase power agreements essential to private financing of such commercial scale facilities depend upon the framework provided by Section 210.

A finding that Section 210 is unconstitutional would eliminate in substantial measure the market for the power generated by the *amici curiae* and would otherwise discourage development of cogeneration and small power production facilities.[3]

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[3] For the information of the Court, three members and one associate of the firm representing *amici curiae* herein were employees of the Federal Energy Regulatory Commission (FERC) either at the time PURPA guidelines were promulgated or the present litigation was instituted. Charles B. Curtis was Chairman of the FERC; Robert

SUMMARY OF ARGUMENT

Determined to provide an effective legislative response to the nation's energy problems, Congress enacted The National Energy Act in 1978. One portion of that broad legislative initiative, Section 210 of the Public Utility Regulatory Policies Act of 1978, was designed to foster development of facilities which utilize the nation's "alternate energy" resources to generate electricity.

Congress therein 1) directed the Federal Energy Regulatory Commission (FERC) to promulgate rules which guarantee such facilities a market for the electricity they produce at fair rates, and which prohibit discrimination by electric utilities; and 2) authorized the FERC to exempt such facilities from state and federal regulation applicable to electric utilities. Section 210(a)-(e). Each of these measures removed substantial economic or institutional barriers which heretofore discouraged investment in alternate energy.

Section 210(f)(1) requires each state regulatory authority to implement the FERC rules for each electric utility subject to its jurisdiction. Non-regulated electric utilities are required to implement the FERC rules for themselves, pursuant to Section 210(f)(2).

The Court must now decide whether Congress exceeded its constitutional authority and violated the Tenth Amendment by sharing responsibility for implementa-

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R. Nordhaus was General Counsel; Ross D. Ain was Associate General Counsel; and Adam Wenner participated in the litigation below. Based upon representations of non-participation of those identified above by counsel for *amici curiae*, the FERC, by letter dated July 16, 1981, concluded that it did not object to counsel's representation of the *amici curiae*. A copy of that letter was sent by the FERC to all parties and has been filed with the Court, along with letters providing the consent of the parties to the filing of this brief pursuant to the Court's Rule 36.2.

tion of this program with the states. A three-part test for resolving this question was recently articulated by the Court in *Hodel* v. *Virginia Surface Min. & Recl. Ass'n., infra.* All three parts must be answered affirmatively before any Tenth Amendment challenge may succeed. Even then there are situations in which the legislation may be upheld because of the nature of the federal interest.

At most, only Section 210(f)(1) satisfies even the first segment of the three-part test — regulation of states as states. *None* of Section 210 satisfies the second segment of the three-part test. It is well established that the state role in regulating retail rates of electric utilities persists only because Congress has elected to continue sharing regulatory reponsibility with the states and *not* because it is an "attribute of state sovereignty" or a function "essential to separate and independent existence." Even assuming that the states' traditional regulation of a segment of interstate commerce is an attribute of state sovereignty or an essential state function, nothing in Section 210 "directly impairs" that function. Section 210(f)(1) was purposefully crafted to *preserve* the historical state control over electric utilities, while implementing important federal policies. Only the most minimal burden is placed on the states. Indeed, nearly all of them are continuing to implement Section 210 without suffering or claiming the slightest impairment of their sovereign and independent existence.

Finally, balancing the purpose of Section 210 and the logic and expediency of state implementation on one hand, with the minimal impact upon the states on the other, there is no doubt that the "nature of the federal interest advanced [is] such that it justifies State submission." *Virginia Surface Mining, infra,* at 2366, n.29.

The decision below pre-dates and is inconsistent with *Virginia Surface Mining,* constitutes an unwarranted ex-

tension of *National League of Cities* v. *Usery, infra,* and should be reversed.

ARGUMENT

I. THE NATIONAL ENERGY CRISIS PROMPTED CONGRESS TO ELIMINATE BARRIERS TO DEVELOPMENT OF ELECTRICAL POWER FROM ALTERNATE ENERGY SOURCES.

A. The Arab Oil Embargo of 1973 Precipitated a National Energy Crisis Which Required a Comprehensive Legislative Program.

As this Court knows, the Arab oil embargo of 1973 plunged this nation into a severe and sustained energy crisis. Since 1973, two energy themes have been emphasized repeatedly by every Administration and Congress: expansion of energy supplies and increased energy conservation. Meeting these objectives has been difficult. One obvious and continuing problem has been the nation's increasing reliance on foreign oil. In September 1973, United States users imported 3.2 million barrels of crude oil per day; yet even in the face of escalating prices, imports rose to 6.6 million barrels of crude oil per day in 1977.[4] Since 1973, the price of imported oil has risen from an average $2.46 per barrel[5] to an average of $34 per barrel in July 1981.[6]

The unrelenting energy crisis of the 1970s led President Carter to propose in 1977 a National Energy Plan. As part of that Plan, the Administration introduced the

[4] Congressional Research Service, Library of Congress, *The Energy Factbook,* prepared for the Subcomm. on Energy and Power of the House Comm. on Interstate and Foreign Commerce, 96th Cong., 2d Sess. 107 (Comm. Print 1980) (hereinafter cited as "1980 Energy Factbook").

[5] *Id.* at 275.

[6] PETROLEUM INTELLIGENCE WEEKLY, August 3, 1981 at 2. This is the average OPEC price.

National Energy Act,[7] one part of which addressed the electric utility industry and ultimately became the Public Utility Regulatory Policies Act of 1978 (PURPA).

In its consideration of PURPA, the Senate Energy and Natural Resources Committee provided this concise description of the problems facing the nation's electric utility industry:

> The reduction in efficiency and the extraordinary rise in costs experienced by electric utilities in recent years concern the committee. . . . [I]ncreasing use of relatively energy intensive capacity for peaking due to non-uniform loads has resulted in consumption of scarce fuels, thereby exacerbating the already serious problems of declining domestic reserves of such fuels and increasing reliance by the United States on imported fuels . . . .

S. Rep. No. 95-442, 95th Cong., 1st Sess. 9 (1977) (Senate Report).

B. The Energy Crisis So Transformed the Economics of the Nation's Electric Power Generation Industry That Alternate Sources of Supply Were Needed.

While staggering oil price increases affected virtually every sector of the economy, the business of generating electrical power was particularly hard hit since cheap fossil fuels had shaped the very development and structure of the industry.

The electric utility industry's early history was characterized by remarkable growth. Economies of scale and improved technologies allowed the industry to reduce

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[7] The National Energy Act was originally composed of five major parts, and was passed as five separate pieces of legislation: the Public Utility Regulatory Policies Act of 1978, the Energy Tax Act of 1978, the National Energy Conservation Policy Act, the Power Plant and Industrial Fuel Use Act of 1978 and the Natural Gas Policy Act of 1978.

per unit costs by increasing capacity and selling to more customers.[8] Eventually, economic transmittal of electric power across the nation, even into remote rural areas, became a reality.[9] As the utilities continued to grow and provide electricity at steadily declining rates, many smaller scale generation facilities, such as small hydroelectric dams, became uneconomical and were abandoned. By the time of the Arab oil embargo, the generation of electricity in many areas of the country was dominated by large, central station generating companies that were overwhelmingly dependent upon fossil fuels.

By 1973, the electric utility industry consumed 10.5 percent of all oil consumed in the United States[10] — 560.2 million barrels of oil — as well as 3.66 trillion cubic feet of natural gas and 389.2 million short tons of coal.[11] In 1976, the industry consumed *29 percent of all energy consumed in this country*[12] and in return generated just 12 percent of end-user energy.[13]

Meanwhile, the cost of expanding or replacing power plants increased enormously. The cost of building new capacity increased by 68 percent between 1970 and 1975.[14] In

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[8] Electric utility costs are dominated by fixed, as opposed to variable, costs. Decreasing costs per unit result as production increases because the constant costs are distributed over greater numbers of units.

[9] *See generally* E. Vennard, *The Electric Power Business* 11-12 (1962); P. Garfield and W. Lovejoy, *Public Utility Economics*, Ch. 1 (1964).

[10] 1980 Energy Factbook at 101 and 637.

[11] *Id.* at 637.

[12] This included 16 percent of the natural gas and 10 percent of the petroleum consumed in that year. Senate Report at 23.

[13] *Id.*

[14] Capacity is the maximum power output rating of a system. A kilowatt is a measure of the rate of production of a system. A kilowatt

1976, the electric utility industry, the nation's most capital intensive major industry, was responsible for 17 percent of the $120 billion spent by *all* private industry on new plants and equipment.[15]

These extraordinary fuel and construction cost increases led to a 70 percent increase in the average utility bill between 1970 and 1976, temporarily dampening demand for electricity. By 1976, however, demand revived even in the face of these increases, and the rate of growth in electricity generation was once again approaching the high rates of the pre-embargo years.[16] To compound the problem, generating capacity was being utilized less efficiently, as load factors were decreasing.[17]

As Congress saw it,

> [i]n recent years the electric utility industry has been afflicted by a number of complex and interrelated problems.
>
> These include declining load factors, increasing fuel costs, rapidly rising costs of new capacity, lower than expected power-plant reliability and a virtual end to economies of scale at the largest sizes of generating plants.

Senate Report at 9.

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hour is a unit of energy, equivalent to 3.413 British Thermal Units, which is utilized by a device requiring 1,000 watts of power for continuous operation over the period of one hour.

[15] Senate Report at 7.

[16] S. Rep. No. 95-361, 95th Cong., 2d Sess. 33 (1978) (Power Plant and Industrial Fuel Use Act of 1978).

[17] Load factor is the ratio of average load (the average power demand placed on a system) to peak load (the maximum power demand placed on a system). The industry's load factor was decreasing in the mid-1970s because *peak* load demand was increasing faster than *average* load demand. Thus, most new capacity was being used inefficiently to satisfy peak and not average load demand.

Despite these economic disadvantages, the electric utility industry has tended to expand expensive conventional steam generating capacity to meet increasing demand.[18] However, as the price of electricity continued to escalate, a market was created for "alternate energy sources" such as cogeneration and small power production facilities which utilize waste heat, solid waste, geothermal, water, wind and solar resources to generate electricity and otherwise utilize more efficiently the nation's indigenous energy sources.

C. Section 210 Removed Institutional Barriers to Timely Development of Alternate Sources of Electricity Generation.

Even though alternate energy sources often generate electricity at costs lower than the marginal costs of central station generated electricity, there were in 1977-78 formidable institutional barriers to their development.

The most significant barriers were rooted in the electric utility system itself. As Senator Charles Percy noted during Senate consideration of PURPA, "[s]ome electric utilities, unfortunately, are uneasy about this new source of competition."[19]

Cogenerators and small power producers need a market for the energy they produce and do not use.[20] The

[18] One reason for this tendency may be that consumers are insulated, if temporarily, from the full effects of high fuel and capacity costs because they typically are charged an "average" cost rate, rather than a "marginal" cost rate. A marginal cost rate reflects the full cost of producing the last, or the incremental, power needed to meet increased demand.

[19] 123 Cong. Rec. S13,212 (daily ed. Aug. 1, 1977).

[20] Cogenerators generally utilize at least some of the electricity they produce. Small power producers, however, are normally in the business of selling the electricity they produce.

logical customer for this power is the local electric utility, which can resell the power either to other utilities (wholesale) or to the ultimate consumers (retail) over its interconnected transmission and distribution lines. If the utility either refuses to purchase the power, or pays an inadequate rate, the cogenerator or small power producer lacks full access to its market, since it cannot otherwise economically transmit or distribute its power to customers.

In addition, cogenerators and small power producers sometimes need to purchase electricity.[21] The only logical source for supplementary or back-up power is the local electric utility. But the utility can hinder utilization of the alternate energy source by charging a discriminatory rate. Congress was well aware of these institutional barriers as it considered Section 210.[22]

Yet another barrier was the prospect that cogenerators and small power producers would be regulated as public utilities. Thus, relatively small scale facilities and facilities that generate electricity only as a by-product of industrial or municipal processes would become entangled in the detailed state-federal scheme meant to regulate large, vertically integrated enterprises.

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[21] For example, if a cogenerator consumes more electricity than it is able to generate it will require a regular source of supplementary power. In addition, when a cogeneration or small power production facility requires maintenance or otherwise suffers an interruption in the production process, back-up energy may be needed.

[22] *See, e.g. Public Utility Rate Proposals of President Carter's Energy Program: Hearings on Part E of S. 1469 Before the Subcomm. on Energy Conservation and Regulation of the Senate Comm. on Energy and Natural Resources (Part 2)*, 95th Cong., 1st Sess. 385 (1977) (statement of Sen. Percy); 123 Cong. Rec. S16,382 (daily ed. Oct. 5, 1977) (remarks of Sen. Durkin); 123 Cong. Rec. S16,398 (daily ed. Oct. 5, 1977) (remarks of Sen. Hart); 123 Cong. Rec. S16,414 (daily ed. Oct. 5, 1977) (remarks of Sen. Haskell).

The purchase, sales, and regulatory barriers combined to make alternate energy production a poor financial risk despite its potential for producing electricity at a cost below the typical electric utility's marginal or incremental cost.

Section 210 removes these economic and institutional barriers. Electric utilities are required to *purchase* electric power from alternate energy producers at a price fair to consumers, not to exceed the utilities' incremental or avoided cost. Electric utilities are required to *sell* electricity to such facilities at non-discriminatory rates. Most alternate energy producers are exempted from various state and federal laws and regulations applicable to electric utilities and their holding companies. Thus, cogenerators and small power producers are guaranteed a market and a fair rate for their electrical output, a reliable source of supplementary and back-up power, and freedom from regulatory burdens never meant for them.[23]

II. SECTION 210 HAS FOSTERED DEVELOPMENT OF THE NATION'S ABUNDANT ALTERNATE ENERGY POTENTIAL.

A. Undeveloped Hydropower Resources Could Potentially Supply Enough Electricity to Replace Over 600 Million Barrels of Oil Per Year.

Harnessing the energy available in falling water with turbines and generators is one of the oldest energy technologies in the United States. Hydroelectric power once

[23] Two companion provisions deserve mention here. Sections 202 and 203 of PURPA created new Sections 210 and 211 of the Federal Power Act, codified at 16 U.S.C. §§ 824i and 824j, authorizing the FERC to order a utility to interconnect with and wheel power produced by a cogeneration or small power production facility. This facilitates the direct sale for resale of electrical power by cogenerators and small power producers, through the local electric utilities' transmission and distribution systems, to distant utilities that may pay a higher rate for the power.

provided a substantial portion of the nation's total electricity — 40 percent in 1940. In the last four decades, however, many hydropower plants were abandoned and their generating capacity was replaced by the fossil fuel dependent, central station powerplants that dominate the electricity generation business, so that hydropower supplied less than 13 percent of the nation's electricity in 1979.[24]

The enormous potential generating capacity of small hydroelectric facilities, including abandoned facilities requiring only renovation or repair, was well known to Congress. For example, the House Committee on Interstate and Foreign Commerce noted that

> [s]tudies released subsequent to the committee hearings indicated that more than 49,000 existing dams had the potential to develop as much as 33 million kilowatts of capacity which could produce 105 billion kilowatt-hours of electricity — more than enough to meet the entire residential, commercial and industrial needs of a city the size of New York.

H.R. Rep. No. 95-496 (Part IV), 95th Cong., 1st Sess. 130 (1977) (Power Plant and Industrial Fuel Use Act of 1978).

More recently, the Federal Energy Regulatory Commission (FERC) has estimated that the new electricity generation resulting from use of *all* of the nation's hydropower potential could be as high as 401 billion kilowatt hours of annual generation — no less than *the energy equivalent of 682 million barrels of oil per year.*[25]

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[24] United States General Accounting Office, *Hydropower — An Energy Source Whose Time Has Come Again*, EMD-80-30 at 7, 9 (January 11, 1980) (hereinafter cited as "GAO Hydropower Report").

[25] United States Federal Energy Regulatory Commission, *Monitor* 10 (July 13, 1981).

Despite the widespread recognition that vast hydropower potential remains to be developed, only 2 applications for preliminary permits were filed with the FERC in all of 1976.[26]

The FERC issued its guidelines to implement Section 210 in March 1980. 18 C.F.R. Part 292. The response to publication of the guidelines was immediate. In 1980 alone, 504 applications for preliminary permits were filed at the FERC. The Director of the FERC's Division of Hydropower Licensing recently announced that, as of May 31, 1981, the FERC had pending before it 1,054 applications for preliminary permits and had issued 511 permits. The FERC's staff has estimated that it will receive a total of 1,800 permit applications in 1981.[27]

It is impossible to state with precision how much hydroelectric potential will be developed as a direct consequence of Section 210. It is indisputable, however, that by placing hydropower in a position to compete with large central station power, Congress has successfully directed renewed attention to one of the cheapest, cleanest, oldest and most efficient methods of generating electricity.

B. Solid Waste Represents the Potential Energy Equivalent of 300 Million Barrels of Oil Per Year.

The nation generates approximately 200 million tons of municipal solid waste annually — the energy equiva-

[26] United States Department of Energy, *Report for the White House Interagency Task Force on Small Hydropower*, DOE/RA-0060 at Appendix E (January 15, 1981). A preliminary permit to study a potential hydropower site is obtained as a prelude to ultimate application for a license to construct and operate a hydroelectric project, pursuant to the provisions of Title I of the Federal Power Act, 16 U.S.C. §§ 791a *et seq.*

[27] Address by Ronald A. Corso, Director, Division of Hydropower Licensing, F.E.R.C., 1981 Engineering Foundation Conference, Small Hydroelectric Development (July 18, 1981).

lent of roughly 300 million barrels of oil per year — but less than 2 percent of this resource is currently being utilized to generate power.[28]

Municipal solid waste has been used as an energy source in European countries for several decades.[29] It was initially tapped on a large scale in the United States in the late 1960s when alternate methods of waste disposal were sought to cure the problem of scarce landfill in some urban areas.[30] Since municipal governments often handle solid waste disposal, unique coordination is necessary among local governments, industrial developers, investors willing to finance a waste-to-energy plant, and utilities which will purchase and distribute electricity generated. A number of different technologies are readily available to convert garbage into energy, including direct incineration and conversion to refuse-derived fuels. Other conversion technologies employing bacterial or chemical decomposition are less advanced.[31]

In 1976, there were just 16 major waste-to-energy projects either completed or under construction in the United States, and 18 other communities had made com-

[28] Congressional Research Service, Library of Congress, *Pursuing Energy Supply Options: Cost Effective R.&D. Strategies* 195-6, prepared for the Joint Economic Comm., 97th Cong., 1st Sess. (Joint Comm. Print 1981) (hereinafter cited as "1981 Joint Economic Committee Report"). One ton of waste can be converted into the approximate energy equivalent of 1.5 barrels of oil. United States General Accounting Office, *Conversion of Urban Solid Waste to Energy: Developing and Introducing Alternate Fuels from Municipal Solid Waste*, EMD-79-7 at 3-1 (February 28, 1979) (hereinafter cited as "GAO Urban Waste to Energy Report").

[29] "Municipal solid waste" does not include the related categories of industrial waste and agricultural waste. Thousands of tons of the latter two forms of waste are produced daily across the United States and also provide a substantial energy potential.

[30] S. Herman and J. Cannon, *Energy Futures: Industry and the New Technologies* 281 (1976) (hereinafter cited as "Energy Futures").

[31] *Id.* at 284.

mitments to construct and operate such facilities.[32] In 1979, the General Accounting Office identified 131 urban waste-to-energy projects of which 20 were in operation, 10 were under construction, 30 were in the planning stage and 71 were in the preliminary study stage.[33] An analysis conducted by the FERC estimates that, by 1990, Section 210 incentives alone will account for development of the approximate processing equivalent of six 3000 ton per day waste-to-energy facilities,[34] thereby displacing approximately 9.8 million barrels of oil that year.[35]

C. Cogeneration Could Potentially Supply The Energy Equivalent of 2 Billion Barrels of Oil Per Year.

Cogeneration employs the heat produced from one industrial process as the input energy in a second process. Because it utilizes energy potential a second time, a cogenerator is significantly more efficient than a single process generating unit. A cogenerator can produce the same amount of energy with 2.75 barrels of oil as a process steam system and a separate electric generating system produce with 3.25 barrels.[36]

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[32] *Id.* at 281.

[33] GAO Urban Waste to Energy Report at ii and 3-3.

[34] United States Federal Energy Regulatory Commission, *Appendices to Draft Environmental Impact Statement, Rulemaking For: Small Power Production and Cogeneration Facilities — Qualifying Status/ Rates and Exemptions*, FERC/EIS-C0191D at E-6 (June 1980) (hereinafter cited as "Appendices to Draft EIS").

[35] This figure is reached by the calculation: 18,000 tons per day x 365 days per year x 1.5 barrels of oil per ton = 9.8 million barrels of oil per year. Additional significant energy savings will be realized through recovery of reusable materials such as metal and glass.

[36] United States General Accounting Office, *Industrial Cogeneration: What It Is, How It Works, Its Potential*, EMD-80-7 at 3, Figure 1-1 (April 29, 1980) (hereinafter cited as "GAO Cogeneration Report").

Like hydropower, cogeneration is an old and proven process which fell prey to the electric utility companies' low rates made possible by economies of scale and cheap fossil fuel. Cogeneration supplied 15 percent of the nation's electricity in 1950, but only 5 percent in 1974.[37]

Cogeneration is also enjoying renewed attention in the post-Arab oil embargo era. Its promise is unquestionable; waste heat from just two sources, electrical generation and process steam production, could have created enough energy in 1975 to displace 7 million barrels of oil per day.[38] The General Accounting Office recently analyzed the cogeneration potential of three industries and concluded that by the year 2000 the energy savings could be as high as 945,000 barrels of oil per day, or 344 million barrels per year.[39] A report prepared for the Joint Economic Committee concludes that the ultimate potential savings from cogeneration in all industries is "about 2 billion barrels of oil equivalent per year."[40]

In the first fifteen months following the FERC's promulgation of Section 210 rules, the Commission had already received applications for qualifying status for 28 cogenerators totaling 1,200 megawatts capacity.[41]

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[37] 1981 Joint Economic Committee Report at 249.

[38] GAO Cogeneration Report at 1.

[39] *Id.* at 58-9. The three industries were the pulp and paper, chemical, and petroleum refining industries.

[40] 1981 Joint Economic Committee Report at 255.

[41] *The Role of Utilities in Cogeneration and Small Power Production: Hearings Before the Subcomm. on Energy Conservation and Power of the House Comm. on Energy and Commerce*, 97th Cong., 1st Sess. (1981) (statement of John O'Sullivan, Glenn J. Berger, and James C. Liles, all of the FERC staff, at 4-5) (hereinafter cited as "1981 Cogeneration Hearings"). As of the filing of this brief, these hearings had not yet been published; the pages referenced are those in the formal statement as delivered to the Subcommittee.

D. Geothermal Energy Could Potentially Supply Enough Electricity to Replace Approximately One Billion Barrels of Oil Per Year.

Geothermal energy is heat trapped in the earth's crust. It takes numerous forms, including steam, hot water, and magma. Exploration of geothermal energy began in the United States in the 1920s when test wells were drilled at several sites in California, but since there was no market for the steam produced, the resource was not developed. It was not until the mid-1950s that interest revived, leading to the first geothermal energy generating plant which began operations in 1960 with a 12.5 megawatt capacity.[42]

The current geothermal contribution to national electric generation is 932 megawatts of capacity.[43] However, projections promise a significantly greater role in the future; the nation's geothermal resources could total as much as 25,000 megawatts by the year 2000.[44] By 2010, it is estimated that these resources could produce the energy equivalent of one billion barrels of oil per year.[45] If geopressured water resources are exploited, they could yield, in addition, one to two billion cubic feet

[42] Energy Futures at 346. Geothermal resources had been previously tapped for space heating purposes.

[43] United States Department of Commerce, *Materials Needs for the Utilization of Geothermal Energy*, PB81-190159 at 1 (March 1981).

[44] United States Interagency Geothermal Coordinating Council, *Geothermal Energy, Research, Development and Demonstration Program*, Fourth Annual Report, DOE/RA-0050 at 15 (June 1980).

[45] 1981 Joint Economic Committee Report at 287. The Joint Economic Committee cites the figure five to six quads. One quad is the equivalent of approximately 500,000 barrels of oil per day or approximately 182 million barrels of oil per year.

of natural gas per year by 1985, and two to four trillion cubic feet per year by 2000.[46]

According to the FERC, seven identified hot-water sites might be developed as a result of PURPA, with a projected total installed capacity of 9,470 megawatts over a 30-year lifespan.[47]

Geothermal energy development is a particularly risky venture. Precise estimates of the lifespan, capacities and production characteristics of geothermal reservoirs are almost impossible to develop. Thus, potential investors lack the necessary information on the costs of electricity generated from these resources. Without the assured market created by Section 210, geothermal production projects would find it far more difficult to attract sufficient equity to continue development.

E. Wind Energy Could Potentially Supply Enough Electricity To Replace Nearly One Billion Barrels of Oil Per Year.

Wind energy is converted into electric energy by a rotating blade which drives a generator. Windmills were used extensively in the United States between the 1850s and the 1930s primarily to produce direct *mechanical* energy. This usage was sharply reduced as other energy sources became available.[48]

There is no commonly accepted estimate of the current contribution of wind energy to the nation's electricity, but the energy content of wind is vast. One study estimates that if 54,000 wind powered generators were erected across the United States, they would produce one

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[46] United States General Accounting Office, *Geothermal Energy: Obstacles and Uncertainties Impede its Widespread Use*, EMD-80-36 at 3 (January 18, 1980).

[47] Appendices to Draft EIS at G-7.

[48] 1981 Joint Economic Committee Report at 323.

trillion kilowatt hours of electricity annually — nearly one-half of the total electricity generated nationwide in 1979.[49] Another study estimates that wind energy could produce the equivalent of 2.5 million barrels of oil per day or nearly a *billion* barrels of oil per year by the year 2000.[50] The Department of Energy anticipates that in response to PURPA, wind energy conversion systems will total 1900 megawatts of installed capacity by the year 1995,[51] representing the energy equivalent saving of approximately 7.9 million barrels of oil per year.[52] In fact, *amicus curiae* USW recently began operation of one wind farm and began construction of a 30 megawatt facility. USW and others have announced plans for constructing over 1,000 megawatts of additional wind energy capacity in the next decade.

III. SECTION 210 RELIES UPON AND IS CONSISTENT WITH THE WELL-ESTABLISHED DIVISION OF STATE-FEDERAL ELECTRIC UTILITY REGULATION.

During its consideration of legislation to encourage cogeneration and small power production, Congress was cognizant of the well-established dual state-federal regulation of the electric utility industry.

In *Public Utilities Comm'n. of Rhode Island* v. *Attleboro Steam & Elec. Co.*, 273 U.S. 83 (1927), this Court held that the Commerce Clause prohibits the states from reg-

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[49] S. Schurr, *Energy in America's Future: The Choice Before Us*, prepared for Resources for the Future 311 (1980).

[50] The Science and Public Policy Program, University of Oklahoma, *Energy Alternatives: A Comparative Analysis*, prepared for the Council on Environmental Quality *et al.* 11-15 (1975). The report cites the figure 5.1 quads.

[51] Appendices to Draft EIS at D-4.

[52] 1980 Energy Factbook, n.4 *supra*, at 778. Twenty-four hours per day production is assumed.

ulating wholesale transactions of electrical power across state lines. Congress responded to the resulting "Attleboro Gap" by enacting the Federal Power Act in 1935. That Act drew "a bright line easily ascertained between state and federal jurisdiction," *Fed. Power Comm'n.* v. *Southern Cal. Edison Co.*, 376 U.S. 205, 215 (1964), declaring *all* wholesale sales in interstate commerce subject to exclusive federal regulation, while permitting the states continued authority over retail sales and general corporate organization, finance and accounting matters.

Thus, over the years the states have established and staffed regulatory commissions, developed retail ratemaking practices and procedures, and built, through countless administrative and judicial proceedings, an impressive body of regulatory precedent. This reservoir of accumulated wisdom and expertise has been finely tuned to local needs and interests; it simply could not be duplicated at the federal level.

This shared regulatory scheme is *not* constitutionally compelled. The appellants' brief will demonstrate how the Congressional Commerce Clause power provides ample authority for direct and exclusive federal regulation of every aspect of cogeneration and small power production covered in Section 210. Pursuant to its "undoubted power to redefine the distribution of power over interstate commerce," *Southern Pac. Co.* v. *Arizona*, 325 U.S. 761, 769 (1945) (citations omitted), Congress could have preempted the entire field and assigned all authority over the wholesale *and* retail transactions governed by Section 210 exclusively to an appropriate federal agency.[53]

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[53] *Conn. Power & Light Co.* v. *Fed. Power Comm'n.*, 324 U.S. 515, 529-30 (1945). Even the well-founded assumption that the historic police powers of the States are not to be lightly cast aside will readily fall before an unmistakable Congressional declaration of pre-

That Congress *could* have done so, however, does not mean that Congress *should* have done so. Congress was well aware that the states occupy a unique position as a result of their jurisdiction over retail rates.[54] There is only one place in which a regulator can efficiently find the precise cost for each and every kilowatt-hour of electricity that a particular utility purchases or generates, and that is in the body of knowledge permeating the typical state retail ratemaking proceeding. As the states' experience under Section 210 to date most graphically demonstrates, *each* utility's avoided cost is different. (See Appendix.)

Congress quite properly chose to avoid the regulatory inefficiencies that would inevitably accompany outright federal preemption, and instead carefully crafted Section 210 to utilize the states' proven regulatory expertise. The important consequence of this Congressional choice is that the federal policy contained in Section 210 can be implemented without disturbing the traditional state role in electric utility regulation.

The FERC followed Congress's lead in promulgating Section 210 guidelines, with, it should be emphasized, the strong support of the organization of state officials most directly implicated, the National Association of Regulatory Utility Commissioners.[55]

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emption. *See Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525 (1977), *citing Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

[54] *Public Utility Rate Proposals of President Carter's Energy Program: Hearings on Part E of S.1469 Before the Subcomm. on Energy Conservation and Regulation of the Senate Comm. on Energy and Natural Resources (Part 1)*, 95th Cong., 1st Sess. 339-40, 367-70 (1977).

[55] The FERC noted that "this rulemaking represents an effort to evolve concepts in a newly developing area within certain statutory constraints" and that it "should leave to the States and nonregulated utilities 'flexibility for experimentation and accommodation of special circumstances' with regard to implementation of rates for purchasers." 45 Fed. Reg. 12,214, 12,226 (1980).

(Footnote continued on following page.)

IV. CONGRESSIONAL RELIANCE UPON THE EXISTING STATE PUBLIC UTILITY REGULATORY SYSTEM TO EXERCISE THE DISCRETION ESSENTIAL TO THE TIMELY DEVELOPMENT OF ALTERNATE ENERGY IS CONSTITUTIONALLY VALID.

The issue in this case, then, is whether the Tenth Amendment prevents Congress from relying upon the wisdom and expertise of the states acting through the existing regulatory structure to assure the nation secure supplies of electricity.

From *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936) until *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), this Court steadfastly upheld Congressional enactments regulating commerce against all claims of unconstitutional intrusion into state sovereignty.[56] While *Usery's* concern for state sovereignty did not come as a surprise,[57] that decision did signal a renewed vitality for

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During the rulemaking process, the National Association of Regulatory Utility Commissioners stated that it

> *strongly supports the delegation of authority to state commissions to implement Section 210 of PURPA.* Although this delegation is required by Section 210(f) of the Act, *we believe that the proposed regulations issued by the FERC* reflect the letter and spirit of the Act, and in general *will lead to the kind of state/federal cooperation that Congress envisioned* when it enacted Section 210. Therefore, with the specific exceptions and recommendations noted below, we support the proposed regulations with the belief that they represent a strong foundation for the encouragement of cogeneration and small power production.

Comments of the National Association of Regulatory Utility Commissioners, submitted in FERC Docket No. RM79-55 (November 30, 1979) (emphasis supplied); Joint Appendix at 84.

[56] L. Tribe, *American Constitutional Law*, § 5-22 at 308 (1978).

[57] *See, e.g., Paul* v. *Davis*, 424 U.S. 693 (1976); *Rizzo* v. *Goode*, 423 U.S. 362 (1976); *Fry* v. *United States*, 421 U.S. 542 (1975); *Edelman* v. *Jordan*, 415 U.S. 651 (1974); *Younger* v. *Harris*, 401 U.S. 37 (1971).

the Tenth Amendment, which had once been labeled a mere "truism."[58]

Recently, the Court undertook a "careful review of the actual basis and import" of the *Usery* decision. In *Hodel* v. *Virginia Surface Min. & Recl. Ass'n.*, 101 S.Ct. 2352 (1981), the Court emphasized that to be successful a claim of a Tenth Amendment limitation upon an exercise of Congressional Commerce Clause power must satisfy "*each*" of three requirements. *Id.* at 2366 (emphasis in original). First, the statute must regulate the states *as* states. Second, the statute must address functions that are "indisputably" attributes of sovereignty or, as the Court put it in *National League of Cities* v. *Usery, supra,* "functions essential to separate and independent existence." *Id.* at 845.[59] Finally, the statute must "directly impair" such sovereign state functions. *Virginia Surface Mining, supra,* at 2366. Most importantly, even if these three requirements are met, there are situations in which the nature of the federal interest advanced justifies state submission. *Id.*, at 2366, n.29. When tested against these standards, Section 210 is not barred by the Tenth Amendment.

A. Only One Part of Section 210 Regulates the States as States.

The constitutionality of all but one subsection of Section 210 is established by application of the first of the three enumerated standards. Subsections (a) through (d) of Section 210 do not "regulate" the states at all; rather they direct *the FERC* to promulgate, after consultation with the states, certain specified rules according to certain specified standards. Subsection (e) authorizes exemption

[58] *United States* v. *Darby*, 312 U.S. 100, 124 (1941).

[59] This phrase dates back through *Coyle* v. *Oklahoma*, 221 U.S. 559, 580 (1911), to *Lane County* v. *Oregon*, 74 U.S. (7 Wall.) 71, 76 (1869).

of cogeneration and qualifying small power production facilities from state and federal regulation. Finally, subsection (f)(2) regulates utilities which are not subject to state utility regulation.

Only Section 210(f)(1) meets the test of regulating the states as states. That subsection requires that within one year after the FERC promulgates a rule under subsection (a), each state regulatory authority shall, after notice and opportunity for public hearing, implement that rule for each electric utility subject to its jurisdiction.[60]

B. None of Section 210 Addresses Any Attribute of State Sovereignty.

The second requirement of the *Virginia Surface Mining* test is that the provision must address matters that are "indisputably attributes of state sovereignty." This Court's prior decisions offer few specific examples of that standard. The decision on where to locate a state capitol unquestionably is an "attribute of state sovereignty," *see Coyle* v. *Oklahoma*, 221 U.S. 559 (1911), as is the determination of wages, hours and overtime policies for a state's employees engaged in governmental functions. *See National League of Cities* v. *Usery, supra* at 845.[61] Each of these matters is intricately and directly linked to the very core of the business of running a state government. Each concerns the staffing, facilities and finances of state government — the very machinery necessary to deliver

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[60] Subsection (h)(2) provides the enforcement mechanism for subsection (f).

[61] So, apparently, is the ability to hold free of federal taxation the real estate necessary for such essential government functions as schools and parks. *New York* v. *United States*, 326 U.S. 572, 586 (1946) (Stone, C.J., concurring) (cited with approval in *National League of Cities* v. *Usery, supra* at 843).

any essential government service.[62] Clearly, nothing in Section 210 addresses the machinery essential to performance of any sovereign state functions.

To begin with, regulation of *wholesale rates* is anything *but* an attribute of sovereignty or an essential function of state government. To the contrary, it is an area which the states have been expressly forbidden to enter absent federal authorization. *Public Utilities Comm'n. of Rhode Island* v. *Attleboro Steam Elec. Co., supra.* The only state government function even arguably involved in the implementation of Section 210 is the *retail* electric utility ratemaking function. But this can hardly be an attribute of sovereignty or a function essential to separate and independent existence.[63] Instead, this function is performed by the states solely because it has been the considered judgment of Congress that regulatory jurisdiction over retail sales should be left to the states.

C. Nothing in Section 210 Directly Impairs the States' Ability to Structure Functions Essential to Separate and Independent Existence.

The third requirement of the *Virginia Surface Mining* test also cannot be met — nothing in Section 210 "directly impairs" the states' ability to structure operation of their traditional public utility regulatory function, let

[62] Even when a federal command *does* directly affect machinery of state decision-making, it does not necessarily affect "attributes of sovereignty." One Circuit has held, for example, that the ability to pay female employees less than male employees for equivalent work is not an attribute of sovereignty, *Pearce* v. *Wichita County, City of Wichita Falls, Texas, Hospital Board,* 590 F.2d 128 (5th Cir. 1979); another Circuit has held that such discrimination is not essential to the separate and independent existence of the states. *Marshall* v. *City of Sheboygan,* 577 F.2d 1 (7th Cir. 1978).

[63] The State of Nebraska does not even maintain an electric utility regulatory commission, yet it continues to exist as a separate and independent sovereign entity.

alone any sovereign function essential to separate and independent existence.

Section 210 *deliberately* leaves state jurisdiction over retail ratemaking wholly intact. The principal purposes of such regulation — the protection of consumers, the delineation of service areas of "natural monopoly" utilities, and the assurances of a fair rate of return to these utilities — are not at all affected.

Here again, it is critical to remember that Congress determined that the states should play a role in the implementation of Section 210 precisely because the states already possess the machinery and expertise essential to the efficient, economical and expeditious effectuation of the statute's policy. Efficient implementation of PURPA required Congress to avoid any impairment of the state regulatory function.

No functions essential to independent state existence are implicated. No state legislation is necessary. No new state agency must be formed. No new personnel need be hired. No policy on compensation or hours of employment need be changed. "The impact of enforcement, to the contrary, can be expected merely to involve the use of existing structures and personnel . . . ." *Friends of the Earth* v. *Carey*, 552 F.2d 25, 38 (2d Cir.), *cert. denied*, 434 U.S. 902 (1977), cited with approval in *Virginia Surface Mining, supra* at 2366, n.30; *see also United States* v. *Ohio Dept. of Highway Safety*, 635 F.2d 1195 (6th Cir. 1980), *cert. denied*, 101 S.Ct. 2031 (1981).

The calculation of any particular utility's avoided cost or range of avoided costs requires an examination of the company's existing range of costs for purchased and generated power. Since the cost of that utility's electricity is a central feature of the retail ratemaking process, the state shoulders no new burdensome or difficult task. Assuring that retail rates for sales of back-up or supplemen-

tary power to alternate energy producers are non-discriminatory is a small part of the state regulatory commissions' continuing efforts to assure that *all* retail rates are non-discriminatory.

Section 210 implementation takes (and has already taken) place entirely within the confines of existing state electric utility ratemaking. There is no "forced relinquishment of important government activities" in agencies or programs outside the public utility commissions. *See National League of Cities* v. *Usery, supra* at 846-850. No state programs need be terminated, no employees in other agencies need be laid off or forced to work reduced hours, and no potential new hires need be denied employment. There certainly is no requirement that the states "substantially restructure traditional ways in which [they] have managed their affairs." *Id.* at 849.

Implementation of Section 210, as Congress well knew, was wholly within the existing capabilities of the Mississippi Public Utilities Commission and its sister agencies in other states. The proof is in the fifteen states that have already completed their Section 210 implementation process, and in the rest of the states, save Georgia, which are proceeding with their implementation.[64]

D. Congressional Reliance On The States To Implement Section 210 is Plainly Justified by the Compelling National Interest in Encouraging Alternate Energy Sources.

Congress has rightfully concluded that the nation's energy future is a matter of the utmost urgency. As surely needs no further elaboration here, the national interest in energy security is profound, pervasive and stubbornly elusive of easy solutions. It is a far deeper, more unsettling, and more sustained threat to the general welfare

[64] 1981 Cogeneration Hearings, n.41 *supra*, at 2-3.

than the temporary economic emergency that sanctioned the federal reach deep into wage and salary structures which was upheld in *Fry* v. *United States*, 421 U.S. 542 (1975), and again affirmed in *National League of Cities* v. *Usery, supra* at 844. That Section 210 lacks the limited duration of the *Fry* wage freeze speaks only to the sustained and far-reaching adjustments this nation must make to achieve energy security.

Moreover, the potential of alternate energy is proven. As a result, the difficult question Congress faced in 1977-78 was not *whether* to encourage these new sources of generation — the logic and advantages of that policy are manifest — but *how* to accomplish that goal.

Under the Section 210 program crafted by Congress, any possible impacts on state sovereignty are, at worst, remote and well-circumscribed in scope. Above all else, Section 210(f)(1) is intended to *preserve*, rather than *destroy*, the historical sharing of regulatory authority.

The balance of interests plainly favors the federal legislation in such circumstances. Thus, even if some portion of Section 210 arguably intrudes into an area of state sovereignty or directly impairs some essential state government function, that provision should nevertheless be upheld against constitutional challenge. *See Virginia Surface Mining, supra* at 2366, n.29; *National League of Cities* v. *Usery, supra* at 856 (Blackmun, J., concurring); *Fry* v. *United States, supra*.[65]

Congressional authority to implement Section 210 through federal preemption is indisputable, notwithstanding the attendant displacement of traditional state jurisdiction over retail ratemaking. If the purpose of the

[65] *See also United States* v. *Ohio Dept. of Highway Safety, supra* at 1205; *Public Service Co. of North Carolina, Inc.* v. *Fed. Energy Reg. Comm'n.*, 587 F.2d 716, 721 (5th Cir.), *cert. denied* 444 U.S. 879 (1979); *Friends of the Earth* v. *Carey, supra* at 37.

Tenth Amendment is to preserve state power, it seems untenable to argue that Section 210 — which does *not* impair a state function but rather specifically preserves it — falls within the penumbra of the Tenth Amendment and is unconstitutional. The Tenth Amendment simply does not prevent Congress from relying upon the states when it chooses to regulate in an area where the states have a strong traditional presence, *see United States* v. *Ohio Dept. of Highway Safety, supra,* or where there historically has been a shared state-federal responsibility, *see Friends of the Earth* v. *Carey, supra.*

CONCLUSION

The FERC has promulgated Section 210 rules; fifteen state regulatory commissions have already completed their implementation processes. Each of the remaining state regulatory commissions but one is proceeding with this implementation process. The private and public sectors alike are responding to incentives. Yet the FERC staff recently informed the House Subcommittee on Energy Conservation and Power that it believes the district court opinion in this case has already

> *created a chilling effect for persons interested in developing cogeneration or small power production* by increasing the risk of success for any such project.

1981 Cogeneration Hearings, n.41 *supra,* at 3 (emphasis supplied).

The *amici curiae* are "persons interested in developing cogeneration or small power production" and have indeed felt the chilling effect of the district court's decision.

For the reasons given above and in the brief of the FERC and the Secretary of Energy, the *amici curiae* listed

here respectfully request that this Court reverse the judgment of the district court.

Respectfully submitted,

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August 28, 1981

APPENDIX

APPENDIX

A SAMPLING OF STATE IMPLEMENTATION OF SECTION 210 OF PURPA

STATE	UTILITIES	ENERGY PAYMENTS (¢/kWh)	CAPACITY PAYMENTS ($/kW-year)
Alabama	Alabama Pwr	2.1¢ on-peak June-Oct.; 2.2¢ on-peak, 1.77¢ off-peak Nov.-May	
Arkansas	Arkansas P&L	Reverse metering currently used.	
California	San Diego G&E	Standard rate: 7.748¢ TOD metering: 8.457¢ on-peak; 7.174¢ semi-peak; 6.317¢ off-peak	$0-$40 depending on availability and contract length (1-25 years).
			Incentive Capacity Payment $/kW month / Capacity Factor 00 / 0-14 % 70 / 15-49 1.30 / 50-85 2.00 / 85-100
	Pacific G&E	4.682¢ on-peak, 4.504¢ partial-peak, 3.878¢ off-peak May-Sept.; 4.496¢ on-peak, 4.25¢ partial-peak, 3.794¢ off-peak Oct.-April	$55-$81 for dispatchable capacity (increases with length of contract; other options available for non-dispatchable capacity)
Connecticut	Connecticut L&P Hartford Elec. Lt.	Firm power: 6.7¢ on-peak equals 114.5% of fossil fuel cost. 5.4¢; off-peak equals 90.5% of fossil fuel cost. Non-firm power: 6.6¢; on-peak equals 110% of fossil fuel cost. 5.2¢; off-peak equals 86.5% of fossil fuel cost.	
Idaho	Idaho Power	Firm power; 1.619¢ Non-firm power: 1.41¢-3.86¢ (varies each month)	$116-$318, increasing with contract length (4-35 years)

STATE	UTILITIES	ENERGY PAYMENTS (¢/kWh)	CAPACITY PAYMENTS ($/kW-year)
Kansas	Kansas P&L	1.6¢	
Michigan	Consumers Pwr, Detroit Edison	2.5¢	
Minnesota	Northern States Power	Firm power: 2.06¢-$3.07¢ increasing with contract length 5-25 years. Time-of-day metering service: 2.15¢ on-peak, 1.39¢ off-peak. Non-firm power: 1.35¢; Occasional power: 1.66¢	
New Jersey	Jersey Central P&L	Approximate only: 6.0¢-7.5¢ on-peak; 2.0¢-5.0¢ off-peak.	
New York	Long Island Lighting	3.84¢-4.15¢ on-peak; 3.33¢-3.53¢ intermediate; 2.29¢-2.40¢ off-peak, depending on level of interconnection	$26-$27 on-peak; $2.5 intermediate; $0 off-peak, depending on level of interconnection
North Carolina	Carolina L&P	2.8¢-5.55¢ on-peak; 2.07¢-4.04¢ off-peak; 1.29¢-2.08¢/kWh in non-summer months	1.49¢-2.39¢/kWh in summer months
Oklahoma	Oklahoma G&E PS Oklahoma	0.86¢-3.05¢ depending on firmness of capacity	
Wisconsin	Wisconsin P&L	4.8¢ on-peak; 1.75¢ off-peak (includes capacity payments)	
Wyoming	Tri-County Electric Assn.	1.07¢ (experimental only)	

SOURCE: Department of Energy, *Electric Power Supply and Demand for the Contiguous United States, 1981-1990*, DOE/EP-0022, Table XIII.1 at XIII.5-XIII.8 (July 1981), reprinted in ELECTRICAL WEEK, August 3, 1981.